



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5HS-11

OCT 06 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Great Lakes Asphalt, Zionsville, Indiana.

Dear Sir:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9601, et seq.

Please note that it allows an opportunity for a conference if requested within seven (7) calendar days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within seven (7) calendar days of receipt of the Order.

If you have any questions regarding the Order, feel free to contact Brett Warning, Assistant Regional Counsel, at (312) 886-6733 or William Simes, On-Scene Coordinator, at (312) 886-3337.

Sincerely yours,

A handwritten signature in cursive script, reading "Basil G. Constantelos", is written over the typed name.

Basil G. Constantelos
Director, Waste Management Division

Enclosure

cc: Glenn Pratt,
Indiana Department of Environmental Management

bcc: Tom Pernell, ORC (5CS-TUB3)
Vince Dalvia (5MFS)
Brett Warning, ORC (5CS-TUB3)
W. Simes, OSC (5HS-11)
Ruth Mancos, ESS (5HS-11)
R. Powers/R. Buckley (5HSGI)
Bruce Pumphrey, (5HS-12)
Oliver Warnsley, RP-CRU (5HS-12)
ADD/OSF Read
EERB Read
EERB Site File copy
B. Constantelos, 5H-12 (only if not signed by him)
T. Lesser, Public Affairs (5PA-14)
Sheila Huff, Department of Interior

5HS-11:RMANCOS:LAT:8/3/89:GREATLAKES.ORD/revised:8/10/89:revised:9/15/89

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	Docket No.
)	
Great Lakes Asphalt Inc.)	ADMINISTRATIVE ORDER
)	PURSUANT TO SECTION 106
Zionsville, Indiana 46077)	OF THE COMPREHENSIVE
)	ENVIRONMENTAL RESPONSE,
Respondents:)	COMPENSATION, AND
)	LIABILITY ACT OF 1980
Great Lakes Asphalt, Inc.)	as amended, 42 U.S.C.
Madgel C. McAllister)	Section 9606(a)
Roy Strong)	
David Finton)	

PREAMBLE

This Administrative Order (Order) is issued on this date to the Respondents: Great Lakes Asphalt Inc., Madgel C. McAllister, Roy Strong, and David Finton.

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14 and 14-14-A, and to the Director, Waste Management Division, Region V, by Regional Delegation 14-14-B.

By copy of this Order the State of Indiana has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondents to undertake and complete emergency removal activities to abate a possible imminent and substantial endangerment to the public health and welfare or the environment arising from the actual or threatened release of hazardous substances at the site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Great Lakes Asphalt Site is located in the eastern half of the Southeast Quarter of Section 35, Township 19 North, Range 2 East of the Second Principal Meridian, in Zionsville, Indiana. The Site is

bordered by road 1100 E. to the East and is approximately one half mile north of Indiana State Route 32. The area is primarily residential/agricultural with the nearest residence within 100 feet of the Site.

2. The Site is occupied by a closed asphalt production facility and was owned by Leroy and Madgel McAllister. The property is owned by Great Lakes Asphalt, Inc. which is owned presently by Madgel McAllister.
3. Great Lakes Asphalt, Inc. which operated the asphalt production facility leased several Great Lakes Asphalt storage tanks to Technosolve, Inc. in 1979, and Enviro-Chem, Inc. in 1982, to store "nontoxic petroleum fractions" at the Great Lakes Asphalt Site in Zionsville, Indiana.
4. David Finton and Roy Strong signed the said lease agreement on behalf of Technosolve, Inc. Technosolve, Inc. and Enviro-Chem, Inc. merged thereafter.
5. In July of 1981, a receiver for Enviro-Chem, Inc. was appointed, and Enviro-Chem, Inc. was subsequently dissolved.
6. In 1984, Leroy McAllister applied for a United States Environmental Protection Agency (U.S. EPA) Identification number to dispose of hazardous waste.
7. On May 10, 1989, the U.S. EPA and the State of Indiana responded to a release from the Great Lakes Asphalt Site. A 100,000 gallon tank was opened by vandals and the contents of the tank flowed north onto a neighboring farm. A portion of the flow entered an underground drainage system and followed the natural drainage of the area. The flow traveled approximately one mile west where it discharged into Eagle Creek, a major tributary to the Eagle Creek Reservoir, which is the water supply for the City of Indianapolis.
8. The leaking 100,000 gallon storage tank contained chlorinated solvents including toluene at concentrations of 22,000 parts per million (ppm), xylene at concentrations of 25,000 ppm, trichloro-ethylene at concentrations of 1100 ppm, and pentachloroethylene at concentrations of 3700 ppm, and was contaminated with lead at 1500 mg/kg. These chlorinated solvents are classified as known or possible carcinogens.
9. Six other storage tanks were found on site. Each of these tanks contained less than 1000 gallons of material. Four of these tanks contained hazardous materials, including chromium, lead, barium, and chlorinated solvents. Several tanks on site contain ignitable liquids.

10. On May 16, 1989, McAllister and Great Lakes, among others, were offered the opportunity to conduct the removal. They declined this offer and a U.S. EPA lead removal action commenced on May 17, 1989.
11. Between May 17th and June 6, 1989 U.S. EPA and the State performed the following activities, which have temporarily stabilized the situation:
 - a. Excavated contaminated soil.
 - b. Solidified and stored contaminated sludges and soils.
 - c. Removed contaminated materials from the creek.
12. It is imperative that the materials which have been temporarily staged be removed from the site immediately to avoid immediate threats to human health and to the environment.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. Great Lakes Asphalt Inc. is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Respondents Madgel McAllister and Great Lakes Asphalt Inc. are the present "owner(s)" and "operator(s)" of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20). Respondents David Finton and Roy Strong arranged for disposal or transport for disposal of hazardous substances at the Great Lakes Asphalt Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.
4. Ignitable liquids contaminated with heavy metals are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. A 100,000 gallon tank was opened by vandals and the contents of the tank released into the environment which constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.
7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA and are reasonable and necessary to protect the public health, welfare and the environment.

8. The conditions present at the Facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.65(b)(2). These factors include, but are not limited to, the following:

- a. Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals or food chain;

Actual exposure to vegetation and wildlife already exists at the Great Lakes Asphalt Site. Stressed vegetation traced the flow of the spill and an abundant amount of dead fish outlined the banks of Eagle Creek. The potential for future releases also exist on site. The tank still contains approximately 20,000 gallons of an ignitable substance containing high levels of chromium and lead. Several surface tanks containing heavy metal contaminated oils provide potential exposure to a hazardous substance.

- b. Hazardous substances or pollutants in tanks or other bulk storage containers that may pose a threat of release;

Several aboveground tanks pose a distinct threat of release based upon the contents and conditions of the tanks. The estimated 20,000 gallons still present and the current release pose an immediate threat to the environment.

- c. High levels of hazardous substances or pollutants or contaminants in soil largely at or near the surface that may migrate;

Hazardous substances have already contaminated the surface soil and migrated across the surrounding terrain to a natural water way. Contamination of the soil and water was visibly widespread.

- d. Threat of fire or explosion;

Flammable materials have been found in several tanks on site.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that Respondents undertake the following actions at the Facility:

1. Within fourteen (14) calendar days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondents shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.
3. Respondents shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within fourteen (14) days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents. In the event U.S. EPA disapproves of a selected contractor, Respondents shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.
4. Within seven (7) calendar days after U.S. EPA approval of the Work Plan, Respondents shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondents to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondents to perform, and complete within thirty (30) calendar days after approval, at a minimum, the following removal activities:
 - a. Sample and analyze all containers on site.
 - b. Sample and analyze all contaminated soils and sludges.
 - c. Excavate all contaminated soils and sludges.

- d. Dispose of all contaminated soils and sludges in a U.S. EPA approved disposal facility.
 - e. Decontaminate all containers.
5. All materials containing hazardous substances, pollutants or contaminants removed pursuant to this Order shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.
 6. On or before the effective date of this Order, the Respondents shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. The U.S. EPA has designated William Simes of the Emergency and Enforcement Response Branch, Section II, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondents and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.
 7. The U.S. EPA and the Respondents shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be verbal, but shall promptly be reduced to writing.
 8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondents at the Facility.
 9. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.
 10. All instructions by the U.S. EPA On-Scene Coordinator or his designated alternate shall be binding upon the Respondents as long as those instructions are not clearly inconsistent with the National Contingency Plan.

11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondents, Respondents shall obtain all necessary access agreements. In the event that after using their best efforts Respondents are unable to obtain such agreements, Respondents shall immediately notify U.S. EPA and U.S. EPA shall then assist Respondents in gaining access, to the extent of its authority.
12. Respondents shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.
13. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law.
14. The provisions of this Order and the directions of the On-Scene Coordinator shall be binding on the employees, agents, successors, and assigns of the Respondents.
15. This Order shall be effective ten (10) calendar days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the fifth calendar day following the day of the conference unless modified in writing by U.S. EPA.
16. Within ten (10) calendar days of the effective date of this Order, Respondents shall provide notice, verbally or in writing, to U.S. EPA stating their intention to comply with the terms of this Order. Verbal notification must be followed in writing within two (2) calendar days. In the event any Respondent fails to provide such notice, that Respondent shall be deemed not to have complied with the terms of this Order.
17. Copies of all records and files relating to hazardous substances found on the Site shall be made available to the U.S. EPA On-Scene Coordinator prior to the termination of the removal activities under this Order.

18. All notices, reports and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

One copy: William Simes
U.S. EPA (5HS-11)
230 S. Dearborn Street
Chicago, Illinois 60604

One copy: Brett Warning
Assistant Regional Counsel
U.S. EPA (5CS-TUB-3)
230 South Dearborn Street
Chicago, Illinois 60604

19. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Determinations and Findings is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 W. Jackson Blvd., Third Floor, Chicago, Illinois. Please contact Brett Warning, Assistant Regional Counsel, at (312) 886-6733 to review the Administrative Record. An index of the Administrative Record is attached hereto.

OPPORTUNITY TO CONFER

With respect to the actions required above, Respondents may within seven (7) calendar days after issuance of this Order, request a conference with the U.S. EPA. Any such conference shall be held within ten (10) calendar days from the date of request. At any conference held pursuant to the request, Respondents may appear in person, or by an attorney or other representative. If any Respondent desires such a conference, the Respondent shall contact: Brett Warning, Assistant Regional Counsel, (312) 886-6733.

If such a conference is held, Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) calendar days following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within seven (7) calendar days following the receipt of this Order. Any such writing should be directed to Brett Warning, Assistant Regional Counsel, at the address cited above.

Respondents are hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

PENALTIES FOR NONCOMPLIANCE

Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondents to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

By: 

Basil G. Constantelos, Director
Waste Management Division
United States Environmental
Protection Agency
Region V

_____, 1989

ATTACHMENT A.

INDEX TO THE A. R.

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List of Respondents

Great Lakes Asphalt
c/o Madgel McAllister
Parr, Richey, Obremskey & Morton
121 Monument Circle
Suite 500
Indianapolis, Indiana 46204-2994

Madgel McAllister
c/o Mr. Warren D. Krebs
Parr, Richey, Obremskey & Morton
121 Monument Circle
Suite 500
Indianapolis, Indiana 46204-2994

Mr. Roy Strong
Non-responsive

Mr. David Finton
Non-responsive